IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO.11 OF 2003

The Commissioner of Income Tax,
having office at Aayakar Bhavan,
Patto-Plaza,
Panaji-Goa ... APPELLANT

Versus

Shri V.M. Salgaonkar,
HUF, No.1,
Salgaonkar House,
Vasco-Goa ... RESPONDENT

Mr. S.R. Rivankar, Advocate for the Appellant.

Mr.G. Sarangan, Senior Advocate, with Mr. Oswaldo de Ataide and Mr. Agnelo F. Diniz, Advocates for the Respondent.

CORAM : F.I. REBELLO &
P.V. HARDAS,JJ.

DATED : JULY 15, 2003.

ORAL JUDGMENT (PER **F.I. REBELLO,J.)**

Heard the learned Counsel for the parties.

2. The Appeal was filed on two points which according to the Revenue require determination:-

(1) Whether on the facts and in the circumstances of the case, the ITAT was justified in holding

that the "Cansaulim property", is an agricultural land not includable in assesse's net wealth on the ground that the assessee was prevented by the tenants from carrying out the agricultural operations ?

(2) Whether on the facts and in the circumstances of the case, the ITAT was justified in holding that full settlement of interest of one of the member of HUF, by way of partial partition taken place on 6/8/1979, is to be excluded from the net wealth of the HUF, by relying on the Karnataka High Court Judgement in ITRC 97 of 1994, which has been reversed by the Hon'ble Supreme Court in Judgement reported in (1999) 238 ITR 1027 (UOI vs. M.V. Vallippan) ?

3. Having heard the Counsel for the Revenue as well as for the Assessee insofar as the first question is concerned, we find from the Order of ITAT that material was placed in the paper-book which contained:

(a) Gazette Notification;

(b) Index of land;

(c) Copy of land tax paid;

(d) Copy of award of Land Acquisition Officer;

(e) Copy of assessment order for the year 1970-71; and

(f) Copy of appellate order for assessment passed by CWT(A) in Assesse's own case and also other documents to prove that the land was agricultural.

The Appellate Tribunal on the material before it and relying on the Judgment in **CWT v. S.S. Sankaralingam [162 (CTR 400) (Mad)] held that**

the assessee had discharged the burden prima facie establishing that the land was agricultural. That there was no other material coming from the part of the Revenue to show otherwise and even otherwise there was material to show that agricultural operations could not be carried out on the land on account of presence of mundkars and tenants. In our opinion, this is purely a finding of fact. No question of law arises and as such that question does not arise for determination.

4. Insofar as the second point is concerned, the Appeal will have to be allowed. Apart from that, the Revenue itself has filed the application being Miscellaneous Application NO.06/PNJ/2003 before the ITAT relying on the judgment of the Apex Court in **Union of India v. M.V. Valliappan (1999) 238 ITR 1027 wherein t he** Apex Court has reversed the judgment of the Madras and Karnataka High Court relied by the ITAT. Considering that Appeal is before us, the Appeal on the second point will have to be allowed and the Order of the ITAT will have to be set aside and the matter remanded to the Tribunal for hearing the matter afresh on the second point. It is made clear that all the questions and contentions raised by the parties on the second point are left open for

decision by the ITAT.

Appeal is allowed in the above terms. There shall be no order as to costs. Appeal stand disposed of accordingly.

F.I. REBELLO,J.

P.V.HARDAS,J.

ac.